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DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN: 0580-AB28

Scope of Sections 202(a) and (b) of the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth the U.S. Department of Agriculture's (USDA) intention to pursue one of several actions on the above titled Interim Final Rule (IFR) published in the *Federal Register* on December 20, 2016, by USDA's Grain Inspection, Packers and Stockyards Administration (GIPSA). USDA is asking the public to comment as to the possible actions USDA should take in regards to the disposition of the IFR. The IFR addresses the scope of sections 202(a) and (b) of the Packers and Stockyards Act, 1921, as amended and supplemented (P&S Act) in order to clarify that conduct or action may violate sections 202(a) and (b) of the P&S Act without adversely affecting, or having a likelihood of adversely affecting, competition. The IFR was originally set to take effect on February 21, 2017, and is now being extended to October 19, 2017.

DATES: Interested persons are invited to submit written comments on this proposed rule on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: We invite you to submit comments on the proposed rule by any of the following methods:

- *Mail:* M. Irene Omade, GIPSA, USDA, 1400 Independence Avenue, SW., Room 2542A-S, Washington, DC 20250-3613.
- *Hand Delivery or Courier:* M. Irene Omade, GIPSA, USDA, 1400 Independence Avenue, SW., Room 2530-S, Washington, DC 20250-3613.
- *Internet:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the *Federal Register*. All comments received will be included in the public docket without change, including any personal information provided. Regulatory analyses and other documents relating to this rulemaking will be available for public inspection in Room 2542A-S, 1400 Independence Avenue, SW., Washington, DC 20250-3613 during regular business hours. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call the Management and Budget Services staff of GIPSA at (202) 720-8479 to arrange a public inspection of comments or other documents related to this rulemaking.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Litigation and Economic Analysis Division, P&SP, GIPSA, 1400 Independence Ave., SW, Washington, DC 20250, (202) 720-7051, s.brett.offutt@usda.gov.

SUPPLEMENTARY INFORMATION:

Background:

Consistent with the memorandum of January 20, 2017, to the heads of executive departments and agencies from the Assistant to the President and Chief of Staff entitled “Regulatory Freeze Pending Review,” GIPSA published in the Federal Register [81 FR 92566] a notice that extended the public comment period of the IFR until March 24, 2017, and delayed its effective date until April 22, 2017. Along with this proposed rule, GIPSA is also publishing a Notice in the *Federal Register* that further delays the effective date of the IFR until October 19, 2017.

The IFR establishes by regulation the USDA’s long held interpretation that not all violations of the P&S Act require a showing of harm or likely harm to competition. Codified at 9 CFR 201.3(a), the IFR specifically provides that the scope of Sections 202(a) and (b) of the P&S Act encompass conduct or action that, depending on their nature and the circumstances, can be found to violate the P&S Act without a finding of harm or likely harm to competition. This IFR finalizes a proposed § 201.3(c) that GIPSA published in the *Federal Register* on June 22, 2010, 75 FR 35338, with slight modifications in order to allow additional public comment on the proposed provisions.

Actions Being Considered

Because there are significant policy and legal issues addressed within the IFR that warrant further review by USDA, the public is being asked to comment on which of the following four actions they believe would be best for USDA to take with regard to the disposition of the IFR. Specifically, the public should submit their comments as to whether USDA should:

- (1) Allow the IFR to become effective,
- (2) Suspend the IFR indefinitely,
- (3) Delay the effective date of the IFR further, or
- (4) Withdraw the IFR.

Notice Delaying IFR Effective Date

Concurrent with this proposed rule, GIPSA is publishing in the Rules and Regulations section of this issue of the *Federal Register* a document extending the effective date of the IFR by 180 days until October 19, 2017.

Randall D. Jones

Acting Administrator

Grain Inspection, Packers and Stockyards Administration

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